

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EZEKIYAL WELLS,

Plaintiff,

vs.

RALSTON PUBLIC SCHOOLS; and
THOMAS EARHART (an individual being sued
in his individual capacity),

Defendants.

Case No.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT

COMES NOW, Plaintiff, Ezekiyal Wells (“Wells”), by and through his counsel of record, Oluseyi O. Olowolafe of Olowolafe Law Firm, LLC, alleges and states as follows:

NATURE OF THE ACTION

1. This lawsuit arises out of the racial discrimination by a Ralston High School teacher, Mr. Thomas Earhart (“Earhart”) upon using Wells’ yearbook photograph, without his knowledge or consent, on a zoology final exam to his students referencing Wells as an animal.

2. Plaintiff seeks money damages for (1) racial discrimination in violation of 42 U.S.C. § 2000d *et seq.* and the Fourteenth Amendment to the United States Constitution; (2) invasion of privacy in violation of NEB. REV. STAT § 20-204; and (3) Intentional Infliction of Emotional Distress under the laws of the state of Nebraska.

JURISDICTION & VENUE

3. This action is brought pursuant to 42 U.S.C. § 2000d *et seq.* This Court has jurisdiction over the claims in this Complaint pursuant to 42 U.S.C. § 2000d *et seq.* (racial discrimination), 28 U.S.C § 1331 (federal question), 28 U.S.C § 1343 (civil rights), and 42 U.S.C. § 1988.

4. This Court also exercises supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), as the events giving rise to Wells’ claims occurred in Douglas County, Nebraska, and pursuant to 18 U.S.C. § 1965.

PARTIES

6. Plaintiff Ezekiyal Wells is a citizen of the United States and resides in Omaha, Nebraska. Plaintiff was a junior student at Ralston High School at all relevant times herein. Wells' photograph of him was used during the incident in question on or about May 27, 2021.

7. Defendant Ralston Public Schools is a local school district located in Ralston, Nebraska, organized under the laws of the State of Nebraska. Ralston High School is a public school operating within the school district. Ralston Public Schools is the legal entity responsible for Ralston High School.

8. Defendant Thomas Earhart was at all times relevant herein, a Zoology teacher at Ralston High School, and was ultimately responsible for Wells' yearbook photograph being included on a zoology final exam. This Defendant is sued in his individual capacity.

9. All mentioned individual Defendants were acting within the scope of their employment at the times of the incidents giving rise to the causes of action. All Defendants have acted and continued to act under the color of law in the State of Nebraska at all times relevant to this Complaint. Their deprivations of Wells' constitutional rights are set forth in the following statements of facts and causes of action.

STATEMENTS OF FACT

10. On or about May 27, 2021, Earhart administered a final examination for the students enrolled in a zoology class that he taught at Ralston High School.

11. Earhart's first question on the exam included a picture of Wells' yearbook photograph.

12. Earhart's question referred to Wells' yearbook photograph which asked, "which class includes the animal shown?"

13. Earhart's final exam contained no other photographs of humans.

14. Earhart's final exam contained no other photographs of students.

15. Wells was not a current student in Earhart's class.

16. Wells only became aware that his yearbook photograph was used on Earhart's zoology exam when he encountered several students laughing at Wells' photograph that was on Earhart's final exam.

17. Ultimately Wells was shown a digital copy of the exam question that contained his photograph by the students.

18. The digital copy of the exam question that included and referenced Wells' yearbook photograph immediately began to circulate amongst Wells' fellow students via Snapchat.

19. As a result, Wells was devastated and humiliated that Earhart used his yearbook photograph to reference him as an animal on a zoology final exam.

20. Wells immediately contacted his mother Natalie Wells ("Ms. Wells").

21. Upon learning of the unauthorized and misuse of Wells' photograph on the zoology final exam, Ms. Wells contacted Ralston High School Principal Ms. Jesse Tvrdy ("Tvrdy").

22. Tvrdy stated that she would investigate the incident regarding the use of Wells' photograph on the zoology final exam.

23. Earhart ultimately called Ms. Wells and apologized for using Wells' photograph on the final exam.

24. When asked why he had included Wells' photograph on the zoology final exam referencing Wells as an animal, Earhart informed Ms. Wells simply that Wells had been in his class the previous year and that he had a conversation about primates with Wells during that period.

25. As a result of Defendant's actions, Wells has suffered significant injuries including, but not limited to, racial discrimination, ridicule, loss of relationships, and severe emotional distress.

26. Plaintiff has complied with all preconditions to filing a claim under the Nebraska Political Subdivisions Tort Claims Act. On December 24, 2021, the claim was submitted in writing to Ralston Public School District Superintendent Dr. Mark Adler. On March 2, 2022, the claim was resubmitted to the Ralston Public School Board President Mary Roarty. On April 10, 2023, well after six (6) months had lapsed since the claim was filed, Plaintiff withdrew his claim from Defendant's consideration.

COUNT I
TITLE VI CLAIM- RACIAL DISCRIMINATION OF WELLS

27. The allegations of paragraphs 1 through 26 are incorporated herein by reference.

28. As described above, on or about May 27, 2021, Earhart deliberately used Wells' yearbook photograph on a question in a zoology exam referencing Wells as an animal.

29. Earhart's conduct of using Wells' photograph on the zoology final exam was motivated upon Wells race and color, as no other students' nor faculty members' photographs were used within the zoology final exam.

30. As a direct and proximate result of the actions of Earhart, who was employed by Defendant Ralston Public Schools, Wells was subjected to racial discrimination by use and referencing of Wells photograph on Earhart's zoology exam.

31. The action of Earhart was performed under color of state law and violated Wells' rights under 42 U.S.C. § 2000d *et seq.* and the Fourteenth Amendment to the United States Constitution.

32. The conduct of Earhart was willful and exhibited a flagrant disregard for Wells' federally secured rights. Accordingly, under the doctrine of respondeat superior, Defendants are liable to Wells under 42 U.S.C. § 2000d *et seq.* and the Fourteenth Amendment to the United States Constitution.

COUNT II
INVASION OF PRIVACY- USE OF WELLS' PHOTOGRAPH

33. The allegations of paragraphs 1 through 32 are incorporated herein by reference.

34. As described above, Earhart used Wells' photograph on a zoology final exam referencing Wells as an animal.

35. Earhart's use and reference to Wells' photograph as an animal on a high school zoology final exam was highly offensive to Wells.

36. Although the zoology final exam was disseminated to only the students in Earhart's class, the exam question for which Earhart used Wells' photograph and reference to Wells was circulated amongst Wells' fellow classmate via Snapchat.

37. Earhart knew and acted in reckless disregard when he used Wells' photograph on the zoology final exam and referenced Wells as an animal.

38. As a direct and proximate result of the actions of Earhart, who was employed by Defendant Ralston Public Schools, Wells' privacy was invaded when his photograph was used without his permission and without his knowledge.

39. The action of Defendant was performed under color of state law and violated Wells' rights under NEB. REV. STAT. § 20-204.

40. Accordingly, under the doctrine of respondeat superior, Defendants are liable to Wells under NEB. REV. STAT. § 20-204.

COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

41. The allegations of paragraphs 1 through 40 are incorporated herein by reference.

42. Earhart use of Wells' photograph on a zoology final exam which referenced Wells, a former student of Earhart, as an animal is conduct that is so outrageous that it is to be regarded as atrocious and utterly intolerable in a civilized community.

43. Earhart was aware that he did not have permission or consent from Wells nor Ms. Wells to use Wells' photograph within the zoology final exam.

44. Earhart's use of Wells' photograph within the zoology final exam was intentional causing Wells to suffer severe emotional distress.

45. Alternatively, Earhart's use of Wells' photograph within the zoology final exam was reckless in that Earhart was aware that the zoology final exam containing Wells' photograph would be disseminated to Wells' classmates without Wells consent or knowledge.

46. Earhart's unauthorize and misuse of Wells' photograph on the zoology final exam caused Wells emotional distress in that he was ridiculed and humiliated as a result.

47. Digital copies of the exam question containing Wells' photograph were ultimately circulated via Snapchat amongst Wells' classmates.

48. As a direct result of the actions of Earhart, Wells was subjected to ridicule, humiliation, and emotional distress.

49. The action of Earhart was performed under color of state law and violated Wells' rights under the laws of the state of Nebraska relating to Intentional Infliction of Emotional Distress.

50. Accordingly, under the doctrine of respondeat superior, Defendants are liable to Wells under the laws of the state of Nebraska relating to Intentional Infliction of Emotional Distress.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully prays for judgement in his favor and against Defendants on all counts and for the following relief;

A. Compensatory damages against all defendants jointly and severally in an amount to be determined at trial;

- B. Punitive damages against all defendants as allowed by law in an amount to be determined at trial;
- C. Pre- and post-judgment interest as allowed by law;
- D. Reasonable costs and attorneys' fees incurred herein in accordance with; and
- E. For such further relief that the Court may deem just and equitable.

REQUEST FOR PLACE OF TRIAL

Plaintiff requests Omaha as the place for trial.

DATED: May 26, 2023

Respectfully submitted,
EZEKIYAL WELLS

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